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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,117	12/13/2000	Michael Albert Haase	56217USA9A.002	3672

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Attention: Philip Y. Dahl  
Office of Intellectual Property Counsel  
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P.O. Box 33427  
St. Paul, MN 55133-3427

EXAMINER

WARD, JOHN A

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 05/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/736,114

Applicant(s)

WALSH ET AL.

Examiner

John A. Ward

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 7, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US 6,238,119) in view of McGaffigan (US 6,169,948)

Lin ('119) discloses a photo-pen with the function of displaying a phone calling and illumination in dark regarding claim 1 comprising of an electronic device 2, being capable of emitting light having a first and second light element 32, 33, substantially parallel, a battery 30 and a electrical switching circuit 310. Regarding claim 4 lines 51-58 of column 2 discloses how no more then one element is actuated at any one time. Regarding claims 10 and 13 the first and second light elements can be red, green, or blue or a combination thereof (lines 22-41, column 2).

Lin does not disclose the light elements being laser diodes.

McGaffigan ('948) discloses an optical light pipes with laser light appearance regarding claims 1 and 7 having a first and second light emitting element 248, 249 each being a laser diode (lines 60-65, column 12) each having different colors (lines 46-62, column 14). Lines 15-19 of column 7 disclose how the light source can have the color of red or green. Lines 30-38 of column 22 discloses how a ballpoint pen 770 can be use to generate simulated laser light 773. Figure 10B and lines 3-14 of column 10

discloses how the light emitted from the light source can be collimated or parallel light emitted for the light source.

McGaffigan does not disclose that the ballpoint pen weights 450 grams.

Regarding claim 1 it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pen to weight about 450 grams since it was known in the art that a ballpoint pen is light weight and weight less than 450 grams.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ballpoint pen of Lin with the collimated laser light of McGaffigan in order to provide a ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

Claims 2, 5, 8, 11, 14 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US 6,238,119) in view of McGaffigan (US 6,169,948)

Lin ('119) discloses a photo-pen with the function of displaying a phone calling and illumination in dark regarding claim 2 comprising of an electronic device 2, being capable of emitting light having a first and second light element 32, 33. Regarding claim 22, a battery 30 and an electrical switching circuit 310. Regarding claim 5, lines 51-58 of column 2 discloses how no more than one element is actuated at any one time. Regarding claims 11 and 14 the first and second light elements can be red, green, or blue or a combination thereof (lines 22-41, column 2).

Lin does not disclose the light elements being laser diodes.

McGaffigan ('948) discloses an optical light pipes with laser light appearance regarding claims 2 and 8 having a first and second light emitting element 248, 249 each being a laser diode (lines 60-65, column 12) each having different colors (lines 46-62, column 14). Lines 15-19 of column 7 disclose how the light source can have the color of red or green. Lines 30-38 of column 22 discloses how a ballpoint pen 770 can be use to generate simulated laser light 773. Figure 10B and lines 3-14 of column 10 discloses how the light emitted from the light source can be collimated or parallel light emitted for the light source.

McGaffigan does not disclose that the ballpoint pen weights 450 grams.

Regarding claim 22, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pen to weight about 450 grams since it was know in the art that a ballpoint pen is light weight and weight less than 450 grams. Therefore it would have been obvious to one of ordinary kill in the art at the time the invention was made to combine the ballpoint pen of Lin with the collimated laser light of McGaffigan in order to provide an ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

Claims 3, 6, 9, 12, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin (US 6,238,119) in view of McGaffigan (US 6,169,948)

Lin ('119) discloses a photo-pen with the function of displaying a phone calling and illumination in dark regarding claims 3 and 23 comprising of an electronic device 2, being capable of emitting light having a first and second light element 32, 33,

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substantially parallel, a battery 30 and a electrical switching circuit 310. Regarding claim 6 lines 51-58 of column 2 discloses how no more then one element is actuated at any one time. Regarding claims 12 and 15 the first and second light elements can be red, green, or blue or a combination thereof (lines 22-41, column 2).

Lin does not disclose the light elements being laser diodes.

McGaffigan ('948) discloses an optical light pipes with laser light appearance regarding claims 3 and 9 having a first and second light emitting element 248, 249 each being a laser diode (lines 60-65, column 12) each having different colors (lines 46-62, column 14). Lines 15-19 of column 7 disclose how the light source can have the color of red or green. Lines 30-38 of column 22 discloses how a ballpoint pen 770 can be use to generate simulated laser light 773. Figure 10B and lines 3-14 of column 12, discloses how the light emitted from the light source can be collimated or parallel light emitted for the light source.

McGaffigan does not disclose that the ballpoint pen weights 450 grams.

Regarding claim 23, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pen to weight about 450 grams since it was know in the art that a ballpoint pen is light weight and weight less than 450 grams. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ballpoint pen of Lin with the collimated laser light of McGaffigan in order to provide an ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

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Claims 16, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of McGaffigan as applied to claim 1 above, and further in view of DePuydt et al (US 5,879,962).

Lin in view of McGaffigan discloses all the limitations of the claims including a battery and switch circuit, red and green laser diodes, but does not disclose the laser diodes being that of a III-V or II-VI semiconductor laser diode.

DePuydt et al discloses an III-V/II-VI semiconductor interface fabrication method comprising of semi-conductor laser diodes being that of GaAs (III-V) and ZnSc (II-VI) compounds.

Regarding claim 24, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pen to weight about 450 grams since it was know in the art that a ballpoint pen is light weight and weight less than 450 grams. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ballpoint pen of Lin with the collimated laser light of McGaffigan in order to provide an ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ballpoint pen of Lin with the collimated laser light of McGaffigan and the fabrication method of DePuydt et al in order to provide an ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of McGaffigan as applied to claim 2 above, and further in view of DePuydt et al (US 5,879,962).

Lin in view of McGaffigan discloses all the limitations of the claims including a battery and switch circuit, red and green laser diodes, but does not disclose the laser diodes being that of a III-V or II-VI semiconductor laser diode.

DePuydt et al discloses an III-V/II-VI semiconductor interface fabrication method comprising of semi-conductor laser diodes being that of GaAs (III-V) and ZnSc (II-VI) compounds.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ballpoint pen of Kin with the collimated laser light of McGaffigan and the fabrication method of DePuydt et al in order to provide an ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin in view of McGaffigan as applied to claims 3 and 6 above, and further in view of DePuydt et al (US 5,879,962).

Lin in view of McGaffigan discloses all the limitations of the claims including a battery and switch circuit, red and green laser diodes, but does not disclose the laser diodes being that of a III-V or II-VI semiconductor laser diode.



DePuydt et al discloses an III-V/II-VI semiconductor interface fabrication method comprising of semi-conductor laser diodes being that of GaAs (III-V) and ZnSc (II-VI) compounds.

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the ballpoint pen of Kin with the collimated laser light of McGaffigan and the fabrication method of DePuydt et al in order to provide an ballpoint pen that can simulate a line of laser light as taught by McGaffigan (lines 30-38, column 22).

### ***Response to Arguments***

Applicant's arguments filed February 21, 2002 have been fully considered but they are not persuasive. The prior art of record does teach all the limitations of the claims as it stand in this office action regarding the prior art does not disclose the weight of the device being 450 grams, however even though the weight of the device is not disclosed in the prior art it is an obvious matter of design choice to construct a ballpoint pen or laser pointer to be light weight and easy to carry and operate and the range of the weight of the pen add to the novelty of this device.

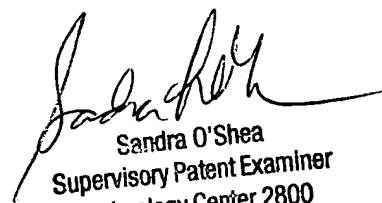
Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection. Note two new secondary references were disclosed in the office action that further teach and suggest in combination all the limitations of the claims.

In response to applicant's argument that the ballpoint pen of Lin is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the ballpoint pen of Lin does teach the use of at least two lighting elements at different frequencies having a battery and electrical switching circuit, and as taught in the independent claims of the instant application and in combination with McGaffigan which also teaches of a electronic device emitting light at different frequencies would emit laser light having different frequencies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John A. Ward whose telephone number is 703-305-5157. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on 703-305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0596.

  
Sandra O'Shea  
Supervisory Patent Examiner  
Technology Center 2800

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JAW

April 29, 2002